

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1684.01
COMPLAINT INVESTIGATOR: John Hill
DATE OF COMPLAINT: February 8, 2001
DATE OF REPORT: March 8, 2001
REQUEST FOR RECONSIDERATION: yes- revised
DATE OF CLOSURE: July 10, 2001

COMPLAINT ISSUES:

Whether the Nettle Creek School Corporation and the New Castle Area Programs for Exceptional Children violated:

- 511 IAC 7-27-2 with regard to the school's alleged failure to provide the parent with adequate notice of the case conference committee (CCC) meeting and to schedule the CCC meeting at a mutually agreed upon date and time.
- 511 IAC 7-22-1(d) and 34 CFR 300.504(a)(2) with regard to the school's alleged failure to provide the parent with a copy of the notice of procedural safeguards at the time of notification of a CCC meeting.
- 511 IAC 7-27-3(a) and 511 IAC 7-12-1(e)(1) with regard to the school's alleged failure to ensure that a public agency representative participated in the student's CCC meetings.
- 511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's individualized education program (IEP) as written.
- 511 IAC 7-27-7(b) and 511 IAC 7-17-72 with regard to the school's alleged failure to ensure the student's teacher of record monitored the implementation of the student's IEP.

During the course of the investigation, the following additional issues was identified:

- 511 IAC 7-19-1(g)(2) with regard to the school's alleged failure to include a representative of the student's private school at the October 4, 2000, and December 12, 2000, CCC meetings.

FINDINGS OF FACT:

1. The student is an eleven-year-old, fourth-grader who is eligible for special education and related services due to a Learning Disability.
2. The school contacted the student's parent by phone to schedule CCC meetings as follows:
 - contact on February 17, 1998 to schedule the CCC on February 19, 1998;
 - contact on April 17, 1998 to schedule the CCC on April 20, 1998;
 - contact on September 27, 2000 to schedule the CCC on October 5, 2000;
 - contact on November 30, 2000 to schedule the CCC on December 4, 2000; and

— contact on December 4, 2000 to reschedule the CCC on December 12, 2000.

The school also sent case conference notification letters to the parents identifying the date, time, and purpose of the meeting; the expected participants; the information to be discussed; and the parent's right to be accompanied by other individuals.

3. The student's December 4, 2000, CCC was rescheduled on December 12, 2000, at the parent's request.
4. The case conference contact forms dated February 16, 1998, April 13, 1998, September 25, 2000, October 5, 2000, and November 28, 2000, do not indicate that the parent was mailed a copy of the Procedural Safeguards with the notification of the CCC meeting.
5. The case conference notification letters dated October 5, 2000, December 4, 2000, and December 12, 2000, indicate that the Procedural Safeguards were not mailed to the parent prior to the CCC meeting.
6. The school's policy states that the student's teacher of record (TOR) is empowered to act as the designated school administrator for all resources available in the student's building. At the student's May 20, 1999, CCC the student's TOR acted as the public agency representative to the CCC.
7. The student's May 18, 2000, CCC Summary/IEP indicates that the student will read 30 minutes per day, be provided with audio tapes of textbooks, and be excused from school during the language arts period to attend a local private school.
3. The student's October 5, 2000, CCC Summary/IEP is not clear about whether the 30 minutes of reading had been provided since the beginning of the school year. The CCC Report states "[the parents] further stated the general education requirements of 30 minutes of oral reading and tape texts . . . had not yet been provided." The CCC Report also includes a statement that "[t]apes were delayed but are now available as is the thirty minutes of oral reading." The school did not document the daily reading requirement prior to October 30, 2000. However, the LD Teacher submitted a written statement that "[t]hirty minute daily reading was begun with [the Student] on September 11, 2000 and continued every day of attendance until documentation began." The December 12, 2000, CCC Summary/IEP indicates that the Student:
 - had been reading orally 30 minutes per day;
 - was provided with audio tapes of textbooks as soon as they were available from the company; and
 - was excused from school during the language arts period to attend a local private school.

A daily log of the Student's reading was implemented on October 30, 2000. The log covers October 30, 2000, through February 23, 2001. During this time period there were

72

instructional days. Of those 72 instructional days, the log indicates the following:

- the Student received 30 minutes of reading on 54 days;
- the Student received less than 30 minutes of reading on 3 days;
- the Student read, but the amount of time is not recorded on 4 days;
- the Student received no reading time on 4 days;
- the Student was absent or late on 4 days, and no reading was done; and
- School was delayed due to inclement weather on 3 days, and no reading was done.

There is no documentation to indicate the Student's TOR regularly monitored the Student's IEP to ensure implementation of the 30 minutes of daily oral reading prior to October 30, 2000.

9. At the May 18, 2000, CCC meeting the parents indicated their intent to enroll the Student in a local

private school for part of the instructional day. The parents subsequently enrolled the Student in the private school for a portion of the instructional day. The case conference notification letters for the October 5 and December 12, 2000, CCC meetings do not indicate that a representative from the local private school was invited to participate in the CCC meetings.

10. No representative of the private school participated in the October 5, 2000, CCC meeting, and the meeting was adjourned to permit the parents time to gather data from the private school. The CCC Summary/IEP Addendum for the December 12, 2000, CCC meeting states the CCC was a reconvening of the October 5 CCC so that the private school representative and data were available. Although not clearly identified in the list of CCC participants, the December 12 CCC discussion notes state "the private school representatives shared their data, observations, and recommendations."

CONCLUSIONS:

1. Findings of Fact #2 and #3 reflect that the school provided the parent with adequate notice of the CCC meetings and scheduled the CCC meetings at mutually agreed upon times and dates. Therefore, no violation of 511 IAC 7-27-2 is found.
2. Findings of Fact #4 and #5 establish that the school failed to provide the parent with a copy of the notice of procedural safeguards at the time of the notification of a CCC meetings during the 1998-1999 and 2000-2001 school years. Therefore, violations of 511 IAC 7-22-1(d) and 34 CFR 300.504(a)(2) are found.
3. Finding of Fact #6 establishes that the school's policy permits the student's special education teacher to act as the public agency representative to the CCC. Therefore, a violation of 511 IAC 7-27-3(a) is found.
4. Finding of Fact #6 demonstrates that the school failed to ensure that a representative of the public agency other than the student's special education teacher participated in the May 20, 1999, CCC meeting. Therefore, a violation of 511 IAC 7-12-1(e)(1) is found.
5. Findings of Fact #7 and #8 indicate that the Student's May 18, 2000, IEP required the Student to receive 30 minutes of oral reading daily during the 2000-2001 school year. Subsequent IEPs continued the plan for 30 minutes of oral reading daily. The School did not begin daily documentation of the reading until October 30, 2000, and the School cannot document the provision of 30 minutes of reading from the beginning of the school year to October 30, 2000. The daily log also indicates days between October 30, 2000, and February 23, 2001, when the Student was in attendance, and either no time for oral reading was provided or less than the requisite 30 minutes was provided. There is no indication that the Student's TOR regularly monitored the implementation of the Student's IEP prior to October 30, 2000, with regard to the provision of 30 minutes of daily oral reading. Therefore, violations of 511 IAC 7-27-7(a), 511 IAC 7-27-7(b), and 511 IAC 7-17-72 are found.
6. Findings of Fact #9 and #10 reflect that, although a representative of the private school participated in the December 12, 2000, CCC, the school failed to ensure that a private school representative participated in the October 5, 2000, CCC meeting. Therefore, a violation of 511 IAC 7-19-1(g)(2) is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Nettle Creek School Corporation and the New Castle Area Programs for Exceptional Children shall:

1. Submit an assurance statement to the Division no later than April 2, 2001, that a procedure has been established and implemented to ensure that the notice of procedural safeguards is given to parents at the time of notification of a student's CCC meeting. The assurance statement shall include a copy of the established procedure.
2. Revise policies and procedures to ensure that the student's teacher of record is not the designated public agency representative at the CCC meetings. Send a memorandum to all appropriate staff along with a copy of the new policies and procedures advising the staff that the student's teacher of record cannot act as the representative of the local agency at the student's CCC meeting, as well as indicating which staff have been designated to serve as the public agency representative. Submit a copy of the new policies, procedures, and the memorandum sent to staff to the Division no later than April 2, 2001.
3. Submit an assurance statement to the Division no later than April 2, 2001, that, for students with disabilities that have been unilaterally enrolled by the parent in a private school, the public school shall ensure that a representative from the private school participates in each CCC meeting, either in person or by telephone.
4. In-service all appropriate staff regarding the requirements as specified in:
 - 511 IAC 7-22-1(d);
 - 511 IAC 7-27-3(a); and
 - 511 IAC 7-19-1(g)(2).

Submit documentation to the Division that the in-service has been completed no later than April 30, 2001. The documentation should include a list or agenda of all issues discussed, any handouts that were distributed and list of attendees by name and title.

5. Reconvene the CCC no later than April 20, 2001, and determine the Student's need for compensatory services with regard to the 30 minutes of oral reading. Submit a copy of the CCC Report/IEP no later than April 27, 2001.
6. Implement a formal documentation log or similar system for documenting the provision of 30 minutes of daily oral reading for the Student (and any compensatory reading time identified). The log must include a daily notation of the number of minutes of oral reading provided. If the full 30 minutes of reading (plus any applicable compensatory time) are not provided, a statement of the reason for the reduced time must be included, as well as when the balance of the requisite time will be made up. The school is not required to make up time for days the Student is absent or school is not in session. A copy of the log shall be sent to the parent at the end of each week beginning the week of April 23, 2001, through the end of the school year. The school shall submit a copy of the log to be used and an assurance statement that it will be sent to the parent at the end of each week no later than April 20, 2001.